IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 540 of 1994

and

CRIMINAL APPEAL No 551 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSING ATMARAM
Versus
STATE OF GUJARAT

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Appearance:
1. Criminal Appeal No. 540 of 1994
MR PM VYAS for Appellant
MR KG SHETH, APP for Respondent No. 1
2. Criminal Appeal No. 551 of 1994
MR PM VYAS for Appellant
MR KG SHETH, APP for Respondent No. 1

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CORAM : MR.JUSTICE M.C.PATEL

and

MR.JUSTICE A.L.DAVE

Date of decision: 05/04/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. These two appeals arise out of a judgment and order rendered by Additional City Sessions Judge, Court No.VIII, Ahmedabad on 6th May, 1994 in Sessions Cases No.355 of 1993 and 414 of 1993. Both the Sessions Cases were disposed of by a common judgment as they arose out of a common incident. These two appeals are also disposed of by this common judgment.

2. The facts of the case in brief are that the appellant Mansing Atmaram Thakore was serving with P.W.D. and staying in a quarter provided to him in the P.W.D. Stores Compound at Vatva around 1993. The appellant Mansing was staying with his wife Jashodaben and three children. Jashodaben had a brother named Somaji Jesingji Thakore who was engaged in labour work. On 15th June, 1993, Somaji came to the house of appellant Mansing. He and his sister Jashoda planned to go to their native place. The appellant Mansing said no to this in respect of Jashoda. In this regard, there was some quarrel between Somaji and appellant Mansing. The appellant Babubhai Govindbhai, who happened to be a friend of appellant Mansing, was present. In that quarrel, appellant Mansing inflicted stick blows on Somaji and appellant Babubhai inflicted dharia blows with the hind portion of the blade of dharia. The multiple injuries caused to Somaji ultimately resulted into his death. Both the appellants, therefore, shifted the dead body from the premises and threw it just outside the gate of P.W.D. Stores Compound. The appellant Mansing returned to the house and told Jashoda that she should not speak anything about the incident otherwise their matrimonial life would be ruined. As per the prosecution case, appellant Babubhai absconded thereafter.

2.1 On noticing a dead body lying under a tree outside the gate of the compound, police personnel went to the spot, prepared a panchnama including inquest panchnama and on the basis thereof, registered an accidental death. That panchnama was prepared in the presence of appellant Mansing as a panch witness. The unidentified dead body of Somaji was sent for post-mortem and further proceedings were conducted. The appellant Mansing, on the next day, went to his in-laws' house and

informed his mother-in-law Amratben Motibhai about the death of Somaji being caused by appellant Babubhai. Still, the next day, appellant Mansing and Amratben came to Ahmedabad and learnt that the dead body was taken away for post-mortem. It was then identified as the dead body of Somaji. Police Inspector Munshi, realising that though Mansing was a panch in the inquest panchnama and brother-in-law of Somaji, he did not identify the dead body at that point of time, suspected something fishy. He, therefore, probed further into the matter and on investigation found out as to what had, in fact, happened, as stated above. Despite all efforts, appellant Babubhai could not be traced and ultimately, warrant was required to be issued against him. However, chargesheet was filed against Mansing. Later on, Babubhai was also arrested and a chargesheet came to be filed against him also. The learned Metropolitan Magistrate, after following the procedure, committed both the cases to the Court of Sessions at Ahmedabad and two separate Sessions Cases No.355/1993 and 414/1993 came to be registered.

3. The charge against the appellants was framed at Exh.2. The appellants pleaded not guilty to the charge and claimed to be tried.

3.1 Considering the evidence led by the prosecution, learned Additional City Sessions Judge came to the conclusion that the prosecution proved the charge against the appellants and convicted them for committing murder of Somaji and sentenced them to imprisonment for life with a fine of Rs.500/- and ordered to undergo R.I. for a further period of 5 months in the event of default in payment of fine. The appellants were also convicted for offence punishable under Section 135 of Bombay Police Act but no separate sentence was imposed.

4. Aggrieved by the said judgment and order, the present appeals are preferred.

5. Mr. Vyas, learned advocate appearing for the appellants, has taken us through the record and proceedings. He has read over the entire evidence before us.

6. According to Mr. Vyas, although the incident has allegedly occurred on 15th June, 1993, Jashodaben has not lodged any complaint in this regard till her statement is recorded after about 8 days. She does not take any action of even informing others. Her version emerging from the deposition, therefore, is only a concoction by

the investigating agency. Mr. Vyas had the same comments for the evidence of Amratben. According to him, Amratben does not have personal knowledge. Her deposition is based only on derived information which is derived after about 8 days of the incident through Jashodaben and, therefore, carries no value.

6.1. Mr. Vyas submitted that the medical evidence does not corroborate the version given by Jashodaben. There are no injuries found on the person of deceased Somaji which could have been caused by a dharia. He submitted that according to Jashodaben, a few blows were given with stick by the appellant Mansing whereas a large number of injuries are found on the person of the deceased.

6.2 Mr. Vyas's next contention is that the investigating agency was bent upon to frame up the appellants and for doing so, they took the help of the family of the appellants. Appellant Babubhai's daughter Rekha did not support the prosecution case but an attempt was certainly made by the prosecution to put certain words into the mouth of appellant Babubhai by way of extra-judicial confession before his daughter Rekhaben. Jashodaben has, however, fallen prey to the investigating agency's attempt, as per the say of Mr. Vyas. Jashodaben has a grievance against appellant Mansing because there was some controversy about the character of Jashodaben and Mansing used to doubt her character. She has, therefore, been falsely implicated.

6.3 Mr. Vyas submitted that the conduct of appellant Mansing also requires consideration. If he was really guilty and avoiding the offence, he would himself not go to his in-laws' place and inform Amratben about the demise of Somaji. His conduct, therefore, reflects his innocence.

6.4 Mr. Vyas has drawn attention of this court to the fact that there are many defects in the investigation. He submitted that the prosecution has not adduced any independent evidence. There are two inquest panchnamas which go contrary to each other. The panchnama of the place of incident does not indicate presence of any blood stains and, therefore, the prosecution story becomes doubtful.

6.5 Mr. Vyas submitted that for the foregoing reasons, the prosecution cannot be said to have established the charge against the appellants beyond reasonable doubt and the benefit ought to have been given

to the appellants. Mr. Vyas submitted that appellant Mansing is a Government servant and had about 17 years of service behind him. If he gets the benefit of doubt, not only he but his family particularly, the children, would also be benefitted. They will get the shelter of a father. Mr. Vyas, therefore, urged that both the appeals may be allowed.

7. The appeals are opposed to by learned Additional PP Mr. Sheth. He submitted that conduct of appellants Mansing as well as Babubhai by themselves indicate their guilt. Appellant Babubhai was absconding for quite some time and warrant was required to be issued against him. So far as Mansing is concerned, Mr. Sheth submitted that he was one of the inquest panch to the inquest panchnama and despite that, he refrains from identifying the dead body as that of his brother-in-law Somaji. Apart from this, he goes to his mother-in-law and informs about the death of Somaji at the hands of appellant Babubhai, trying to relieve himself of the danger. Mr. Sheth submitted that so far as non-filing of the complaint or not informing others by Jashodaben is concerned, it is clearly explained by her in her deposition that appellant Mansing had told her that she should keep quiet or else her family life would be ruined. The lady, therefore, could not have done anything better. Mr. Sheth submitted that there is full-proof of Jashodaben and Amratben besides other circumstances and conduct of the appellant, which establish the guilt of the appellants, as has rightly been done by the court below. He, therefore, urged that the appeals may be dismissed.

8. We have considered the contentions raised before us. We have gone through the record and proceedings.

9. At the outset, it may be stated that the prosecution case depends mainly on the deposition of Jashodaben (Exh.27) who happens to be the wife of appellant Mansing and deposition of Amratben (Exh.31) who happens to be the mother-in-law of appellant Mansing and mother of deceased Somaji.

10. Jashodaben (Exh.27) states that she was married to appellant Mansing about 15 years prior to the incident and out of the wedlock, she had delivered three children. Her brother Somaji was engaged in labour work in trucks. She says that she used to go to her parental house to meet her mother and in this regard, there used to be quarrels between her and her husband Mansing. She says that she does not remember the exact date on which the incident occurred but on that day, her brother Somaji had

come to her house. At that time, her husband and Babubhai, the accused persons, were also in the house. It was rainy season and the time was around 7.00 p.m. She says that her brother had gone to call her for going to her parental house. Her husband denied this proposal and in this regard, there was a quarrel between her husband and her brother. Initially, stick was used and her husband gave stick blows on her brother Somabhai. Babubhai also wielded blows on Somabhai with dharia with the hind portion. She tried to rescue her brother but her husband asked her not to intervene. Her brother succumbed to the injuries and, therefore, both the appellants threw out his dead body. She was asked by her husband not to tell anyone about this or else her family life would be disturbed and, therefore, she did not inform anyone about this incident. She says on the next day, her husband went to her parental house to call her mother. Appellant Babubhai had ran away on the night of the incident. She says that they went to the police station for obtaining possession of the dead body. Therefrom, they went to the Civil Hospital and possession of the dead body was given to them on the 7th day.

10.1 The witness has been cross-examined at length. She admits that her husband is used to drinking and, therefore, there are quarrels between them. She also admits that there are quarrels in respect of her character also but no police complaint has been lodged in this regard. She denies the suggestion that she was not present in the house at the time of the incident and that she was at her parental house. She also denies the suggestion that she came to know about the incident on the next day when her husband came to her parental house.

10.2 Amratben is examined at Exh.31. She says that appellant Mansing came and informed her that her son Somaji had expired and she should go with him. He informed her that Babubhai had committed the murder. They stayed overnight and then came to Ahmedabad. She denies the suggestion in her cross-examination that Jashodaben was staying with her about a week prior to the incident. She says that there were quarrels between Mansing and Jashoda but, by and large, their family life was smooth. She admits that appellant Mansing was addicted to drinking.

11. It is, therefore, very clear from the deposition of these two witnesses that Jashoda had seen the incident but she could not take any action because of the threat administered on her by appellant Mansing who unfortunately happens to be her husband. After all, she

had to think of her three children and her own family life and, therefore, inaction on her part soon after the incident is a natural conduct and there is no reason to doubt her version only on account of delay. During cross-examination, she has held fast to her version and the defence suggestions regarding her being not present on the place of incident are strongly denied by her. This suggestion put to Amratben is also denied and, therefore, there is no reason to believe that Jashodaben was not present at the time of the incident in the house or to believe that she was at her parental house at the time of the incident. No reasons are indicated to doubt her deposition. On the contrary, here is a lady who deposes against her own husband risking her family life, risking her financial support and shelter and as such, we do not find anything to distrust her version.

12. Apart from this deposition, there are other factors which point to the guilt of the appellants. The appellant Mansing, if he was not aware about the incident, could not have gone to Amratben on the next day and informed her that Somaji had expired. He even tries to shift the burden on Babubhai. But that apart, it is even admitted in his statement that he went to Amratben and informed her about the death of Somaji. How he learnt about this is a matter which requires consideration. The answer to it is given by the prosecution in the form of deposition of Jashodaben.

12.1 The second aspect regarding conduct of appellant Mansing which requires consideration is that when Exh.40, the inquest panchnama, was drawn, he was one of the panch witnesses. Still, he does not say anything about his relationship with the deceased nor does he identify the dead body as the dead body of his brother-in-law Somaji and permits the passing over of the dead body as an unidentified one and then, on the next morning, he goes and informs his mother-in-law. This conduct is established by the prosecution through the deposition of Khanchandbhai Nathubhai (Exh.39) who had prepared the panchnama (Exh.40).

13. Additionally, there is discovery of the weapon by the appellants. The appellant Mansing had discovered the stick from his own house. This discovery is proved through the deposition of Kirtikumar Dansing Jadav (Exh.42). The panchnama is at Exh.17. The panch witness Kishorsing Madhosing is examined at Exh.7.

14. On scrutiny of the medical evidence, it is found that a large number of injuries were caused on the

deceased (23 in number) to which the deceased succumbed. All the injuries were ante-mortem and were collectively sufficient in the ordinary course of nature to cause the death as deposed by Dr. Haresh Palekar (Exh.37). It has also come in evidence that the injuries were possible with a stick and hind portion of dharia.

15. Much was argued about Exh.33, the entry in the station diary. The entry relating to the present case is numbered 262 of 1993 and it was argued that the said document refers to other offences also. It is not possible to accept this contention for the reason that Exh.33 is given to entry no.262 of 1993 only and not to the subsequent part on that page wherein entry no.263 of 1993, which relates to some other offence, was made.

16. It was also argued that there is discrepancy about the injuries in the two inquest panchnamas. In our opinion, this discrepancy assumes no importance for the reason that post-mortem notes have been duly proved through medical evidence and the doctor has said that all the injuries found on the person of the deceased were ante-mortem. An error in not mentioning some injuries on the dead body cannot affect the credibility of the prosecution case as a whole. In our opinion, therefore, this conviction is of no virtue to the appellants.

17. For the foregoing reasons, in our opinion, the conviction has rightly been recorded by the Additional City Sessions Judge and neither of the two appeals deserve to be accepted. Both the appeals, therefore, stand dismissed.

( M.C. Patel, J. )

( A.L. Dave, J. )

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